

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

IN RE:
THELMA RUTH LONG,
MARTY LONG,
Debtors.

CASE NO. 13-02343-HAC
Chapter 13

ORDER DENYING DEBTORS' MOTION TO AMEND
SCHEDULES TO ADD POSTPETITION CREDITOR

This matter is before the Court on the debtors' motion to amend Schedule D to add a postpetition creditor, Credit Acceptance Corporation ("Credit Acceptance"). The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the order of reference of the District Court. After a hearing and due consideration of the pleadings, the Court finds that the debtors' motion to amend Schedule D to add a postpetition creditor should be denied.

After the debtors filed their Chapter 13 petition, they borrowed money from Credit Acceptance for the purchase of a Hyundai Elantra automobile. The debtors did not obtain the Court's prior approval to incur the debt for the automobile, but they did file a motion to incur debt *nunc pro tunc* which the Court has granted. In the motion to incur, the debtors stated that they were unable to make the payments on the auto loan and wanted to include the postpetition debt in their Chapter 13 plan. They now want to amend their schedules to add Credit Acceptance as a postpetition creditor.

Bankruptcy Code § 1305(a) provides for certain claims arising postpetition and allows a creditor to file a claim for (1) taxes that become payable while the case is pending or (2) a consumer debt that arises postpetition for property or services necessary for the debtor's performance under the plan. Only the creditor can file a §1305(a) claim for a postpetition debt -- not the debtor as under §501(c). See In re Laymon, 360 B.R. 902, 904 (Bank. E.D. Ark. 2007).

Typically, the types of postpetition consumer debts allowed are for medical expenses and automobile repairs. In re Sims, 288 B.R. 264, 266-67 (Bankr. M.D. Ala. 2003).

The language of §1305 is permissive in nature, and postpetition claimants cannot be required to file claims and participate in the debtor's plan. "[T]he debtors cannot attempt to force those creditors into the confirmed plan by seeking an order adding the debts to the plan and requiring the creditors to file a claim within a specified period." Sims, 288 B.R. at 268.

"Neither the Bankruptcy Code nor the Bankruptcy Rules allows a debtor to force a post-petition creditor into an existing chapter 13 plan. If a post-petition creditor desires to participate in the existing plan, and meets other criteria, a post-petition claim may be filed with and, depending on the facts, allowed or disallowed by the Court." In re Haith, 193 B.R. 341, 342 (Bankr. N.D. Ala. 1995). In both Sims and Haith, the debtors attempted to modify their confirmed plans to add a postpetition creditor. The Sims court found that debtors "may not 'sidestep' §1305's requirements through post-confirmation modification under §1329." 288 B.R. at 268.

In the case at hand, the debtors' motion to amend schedules is an attempt to force a postpetition creditor into the bankruptcy in violation of §1305(a), which leaves the decision to the creditor. The debtors' postpetition debt to Credit Acceptance may constitute "consumer debt . . . for property or services necessary for debtor's performance under the plan" under § 1305(a)(2), but it is not necessary to reach that issue at this point. If Credit Acceptance chooses to file a proof of claim under § 1305(a), the debtors can amend their plan to treat its claim at that point.

The Court adopts the reasoning of Judges Sawyer and Cohen in Sims and Haith, *supra*. For the same reasons debtors cannot modify a plan to add a postpetition creditor which has not filed a proof of claim, debtors should not be allowed to amend their schedules seeking the same

result. Debtors' motion to amend schedule D to add Credit Acceptance Corporation is thus denied.

Dated: October 13, 2015


HENRY A. CALLAWAY
CHIEF U.S. BANKRUPTCY JUDGE